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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL**ARIZONA CORPORATION COMMISSION**

DATE: January 10, 2006
DOCKET NO: W-03551A-04-0325
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**VIRGIN MOUNTAIN UTILITIES COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 19, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 VIRGIN MOUNTAIN UTILITIES COMPANY TO
10 EXTEND ITS EXISTING CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 WATER SERVICE IN MOHAVE COUNTY,
13 ARIZONA AND APPROVAL OF A HOOK-UP
14 FEE TARIFF.

DOCKET NO. W-03551A-04-0325

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING:

April 26 and October 27, 2005

11 PLACE OF HEARING:

Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

13 APPEARANCES:

Sallquist & Drummond, P.C., by Mr. Richard L.
Sallquist, on behalf of Virgin Mountain Utilities
Company;

Beaver Dam Water Company, Intervenor, by its
president, Mr. Robert Frisby; and

Mr. David M. Ronald, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 On April 29, 2004, Virgin Mountain Utilities Company ("Company" or "Applicant"), filed an
21 application requesting approval for an extension of its Certificate of Convenience and Necessity
22 ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water
23 utility service to various parts of Mohave County, Arizona and approval for a Hook-Up Fee Tariff
24 ("HF Tariff").

25 On May 21, 2004, the Commission's Utilities Division ("Staff") issued a notice of deficiency
26 that the application had not met the sufficiency requirements of A.A.C. R14-2-411(C).

27 On January 18, 2005, Staff issued notice that the application had met the sufficiency
28 requirements of A.A.C. R14-2-411(C).

1 On January 21, 2005, pursuant to A.A.C. R14-3-101, the Commission issued a Procedural
2 Order which scheduled a hearing on April 26, 2005.

3 On February 25, 2005, the Company filed certification that it had provided public notice
4 pursuant to the Commission's Procedural Order.

5 On March 28, 2005, Beaver Dam Water Company ("BDWC") filed a request to intervene.

6 On April 18, 2005, BDWC was granted intervention.

7 On April 26, 2005, a full public hearing was held before a duly authorized Administrative
8 Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff were present
9 with counsel. BDWC did not enter an appearance. Since Staff recommended a denial of the
10 application herein, it was determined that Staff should file a late-filed exhibit listing alternative
11 recommendations in the event that the Commission did not adopt Staff's recommendation and chose
12 to approve the application.

13 On April 29, 2005, by Procedural Order, the time-frame was suspended pursuant to A.A.C.
14 R14-2-411 for a period of thirty days from the date of the hearing to allow Staff to file its alternative
15 recommendations after which the matter would be taken under advisement pending submission of a
16 Recommended Opinion and Order to the Commission.

17 On May 27, 2005, Staff filed Alternative Recommendations for possible adoption by the
18 Commission if the Application is subsequently approved.

19 On June 9, 2005, Applicant filed its comments to Staff's Alternative Recommendations.

20 On June 24, 2005, the presiding Administrative Law Judge issued his Recommended Opinion
21 and Order which recommended the denial of the Company's application and which was scheduled to
22 be considered at the Commission's July 12 and 13, 2005, Open Meeting. The matter was pulled from
23 the agenda until the Commission's Open Meeting scheduled for August 9 and 10, 2005.

24 On July 5, 2005, the Company filed its Exceptions to the Administrative Law Judge's
25 Recommended Opinion and Order.

26 On August 3, 2005, to further support its application, the Company filed additional
27 documentation which had not been presented in evidence during the hearing.

28 On August 11, 2005, at the Commission's Open Meeting, the matter was considered and

1 returned to the Hearing Division to review the additional evidence now available, to allow Staff
2 further time to review the material and file its response and/or an Amended Staff Report, and to hold
3 a hearing to consider the Company's additional evidence after which the matter would again be
4 presented for Commission action. As a result, the Company agreed to waive the application of the
5 time-frame rule.

6 On August 24, 2005, by Procedural Order, the Company was ordered to file, by September
7 24, 2005, any new evidence and/or documentation which further supported its application and Staff
8 was ordered to file, by 30 days after the Company's filing, its response and/or Amended Staff Report.
9 It was further ordered that the hearing would be reconvened on October 27, 2005.

10 On September 23, 2005, the Company filed additional documentation in support of its
11 application.

12 On October 24, 2005, Staff filed an Amended Staff Report.

13 On October 27, 2005, the hearing was reconvened at the Commission's offices in Phoenix,
14 Arizona. Applicant and Staff appeared with counsel. The intervenor, BDWC, was represented by its
15 president and general manager. After the taking of additional evidence, the matter was again taken
16 under advisement pending the possible filing of late-filed exhibits by the Applicant and Staff prior to
17 the Recommended Opinion and Order being submitted to the Commission.

18 On November 15, 2005, Staff filed its late-filed exhibit.

19 On November 29, 2005, counsel for Applicant filed a letter in the docket.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. Pursuant to Decision No. 61525 (February 19, 1999), the Company is authorized to
25 provide public water utility service to approximately a half section of land (320 acres) in an
26 unincorporated area located approximately four miles northeast of Mesquite, Nevada, in Mohave
27 County, Arizona.

28 2. On April 29, 2004, the Company filed an application requesting Commission approval

1 for an extension of its existing Certificate to provide public water service to include an additional
2 section of land (640 acres) adjacent to its existing certificated service area, which is more fully
3 described in Exhibit A, attached hereto and incorporated by reference. The Company also requested
4 Commission approval to impose a HF Tariff for its service area.

5 3. Applicant is owned by two individuals who are businessmen in the area. Its general
6 manager, Thomas Stoddard owns 20 percent of the Company and is a registered contractor and the
7 certified operator. The majority owner, Joseph Bowler owns 80 percent of the stock and is a realtor
8 and developer.

9 4. In Decision No. 61525, the Commission found that initially, Applicant's majority
10 shareholder had planned to develop a 60-unit residential subdivision on a 40-acre parcel which he
11 owned. It was estimated that after five years, that the Company would have approximately 100
12 customers.

13 5. No development took place and presently, Applicant has no customers and no
14 distribution system in its current certificated service area. The only revenues which Applicant has
15 derived from its operations since the issuance of its Certificate have come from the sale of water
16 through a standpipe used for construction purposes. Currently, the Company is unable to provide
17 potable water.

18 6. Although Applicant had no facilities other than an eight inch well with a capacity of
19 72 gallons of water per minute, at that time it was indicated that upon the issuance of a Certificate by
20 the Commission, the well site would be transferred from the Bowler Family Trust ("BF Trust") to the
21 Company.

22 7. Upon the Commission's initial approval for a Certificate, the Company anticipated
23 constructing a 50,000 gallon storage tank and related back bone utility plant at a cost of
24 approximately \$150,000. As development took place, main extension agreements were to be
25 executed which would provide for the construction of Applicant's initial distribution system.

26 8. It was also indicated that Mr. Bowler, who was to develop the first subdivision, had
27 not yet obtained his water adequacy statement ("WAS") from the Arizona Department of Water
28 Resources ("ADWR") and Applicant had not yet obtained a Certificate of Approval to Construct

1 (“CAC”) from the Arizona Department of Environmental Quality (“ADEQ”) to proceed with
2 construction.

3 9. In 1999, Applicant had requested financing approval for its initial capital structure
4 consisting of \$90,000 (60 percent) in equity and \$60,000 (40 percent) in debt capital. Staff had
5 recommended that the Company’s initial funding consist of 100 percent equity (\$150,000). The
6 Commission adopted Staff’s recommendation and ordered the Company to fund its initial capital
7 structure with equity because it did not find that Applicant would be able to afford any debt until
8 sometime after the initial stages of development took place.

9 10. The Commission’s approval of a Certificate for the Company in Decision No. 61525
10 was conditioned upon Applicant filing, within 30 days of the effective date of the Decision,
11 confirmation that the well site had been transferred from the BF Trust to the Company and within one
12 year of the effective date of the Decision, a copy of its CAC issued by ADEQ and a copy of its WAS
13 issued by ADWR.

14 11. The Company was also required to post a performance bond in the amount of \$10,000
15 at least 15 days before it first provides service to any customer.

16 12. Pursuant to Decision No. 61525, upon the Company’s failure to timely file copies of
17 its CAC, WAS, and confirmation of the transfer of the well site, the Certificate approved by the
18 Commission would be deemed denied without further Order.

19 13. Subsequently, the Company failed to timely file confirmation of the transfer of its well
20 site, a copy of the CAC, and a copy of the developer’s WAS in a timely fashion.

21 14. Although the Company filed a copy of its CAC issued by ADEQ on December 9,
22 1999, it was not until April 9, 2002, after a series of Commission approved extensions of time that the
23 Company filed a copy of the WAS issued by ADWR. Additionally, it took slightly more than two
24 years from the effective date of the Decision for the Company to file a copy its recorded deed for the
25 transfer of the well site. As of the date of the hearing in this proceeding, Applicant’s system consists
26 of its well site, two 28,000 gallon storage tanks, and ten 110 gallon pressure tanks.

27 15. In this proceeding, the Company’s request for extension is for an entire section of land
28 immediately adjacent to a portion of the existing western boundary of its certificated service area.

1 16. The 640-acre parcel for which the Company is seeking an extension of its Certificate
2 consists largely of an old subdivision with little development on it. 399 acres of the parcel were
3 subdivided into one acre lots sometime around 1950, and is known as the Virgin River Ranches
4 Subdivision. Mr. Stoddard testified that the Company has 90 what it calls "requests for service" from
5 individual lot owners throughout the old subdivision and of the remaining 240 plus acres, Applicant
6 has received similar requests from owners of three separate parcels totaling 37 acres.

7 17. In the initial hearing, although the purported "requests for service" contained an
8 expression of interest by a property owner to be included in the area described in Exhibit A, the
9 "requests for service" contained express language that clearly did not obligate a property owner to
10 utilize service from the Company. On their face, the initial "requests for service" also relieved the
11 Company of an obligation to provide service to property owners "at any point in the future."

12 18. During the subsequent hearing, Applicant submitted 102 requests for service from
13 individual lot owners including that of a property owner who owns approximately a 30-acre parcel.
14 These are definite requests for service "at the earliest possible date."

15 19. Based on a Company exhibit, many of the lot owners who have requested service own
16 parcels that, while scattered throughout the area sought to be certificated, will be located on planned
17 distribution mains which are part of Phase I of the Company's planned distribution system which will
18 be constructed at a cost of \$300,000 with paid in capital from the Company's majority shareholder.

19 20. Mr. Stoddard estimated that more than seventy-five individual lot owners who
20 presently reside in the area described in Exhibit A supply their homes with water from their own
21 wells and utilize septic service for wastewater treatment.

22 21. On March 29, 2005, ADEQ issued an updated CAC which was submitted as an exhibit
23 at the initial hearing. On October 18, 2005, Applicant filed a copy of ADEQ's Certificate of
24 Approval of Construction for the Company's backbone plant.

25 22. Mr. Stoddard testified that Applicant expended \$5,000 for an engineering report to
26 develop a plan to provide service in the extension area. He insisted that the Company's system is
27 ready to be brought on line once pressure pumps are installed and a distribution system constructed to
28 service lot owners.

1 23. According to Mr. Stoddard, the Company, during Phase I, is planning to construct a
2 10-inch main approximately one quarter of a mile westward from its existing well site and storage
3 facilities to the Virgin River Ranches subdivision which is located in the extension area. The
4 Company will then extend service by constructing 10,500 feet of 6-inch distribution mains running
5 north and south on five streets of the subdivision during the first phase of planned development for
6 the utility. Three more phases of system development are planned for later construction in the
7 extension area.

8 24. The Company is requesting approval by the Commission of a HF Tariff at a cost of
9 \$2,500 per lot to partially off-set the cost to provide service to individual lots scattered throughout the
10 extension area.

11 25. Based on the Company's existing physical plant, it will have adequate production and
12 storage capacity to serve the proposed extension area within a conventional five year period, but will
13 require additional expansion in the future as further development takes place.

14 26. The Company has previously secured a franchise which includes the area sought to be
15 certificated in Exhibit A.

16 27. Although the Company has not yet filed a curtailment tariff, it has no outstanding
17 compliance issues with the Commission and is current on the payment of its property taxes.

18 28. Mr. Stoddard testified that the Company's well produces water which the meets the
19 new minimum arsenic standards effective January 23, 2006.

20 29. Although development has not taken place as expected in the Company's existing
21 service area due to the requirement that sewer service be provided to new subdivisions in Mohave
22 County, septic facilities were permitted in the past in the area sought to be certificated herein and are
23 thus grand-fathered to permit further development. Development of the Company's existing service
24 area is beginning to take place since the application of Sunrise Utilities Company ("Sunrise") for a
25 wastewater treatment Certificate in Docket No. WS-04247A-04-0604 was recently approved
26 authorizing Sunrise to provide sewer service in portions of the Company's existing certificated area¹.

27 _____
28 ¹ This is the case with an approximately 30-acre parcel owned by Mr. Bowler, the Company's majority
shareholder, who plans to enter into a main extension agreement with Applicant and either subdivide or lot split the parcel

1 30. The Company indicates that it will provide service in the extension area at its existing
2 rates and charges.

3 31. During the second hearing, Mr. Frisby testified that BDWC is interested in providing
4 service to the area described in Exhibit A, which is adjacent to BDWC's certificated area, but BDWC
5 has not received any requests for service presently and has not filed an application for an extension to
6 the area.

7 32. In the initial Staff Report filed on March 15, 2005, Staff recommended denial of the
8 Company's application and the HF Tariff. Staff based its recommendation to deny the application for
9 a number of reasons as follows:

- 10 • after obtaining a Certificate in February, 1999, Applicant required three additional
11 years to attain compliance following numerous extensions of time to meet the
12 conditions of its original Certificate and still has not begun to provide service to any
13 customers in its initial certificated service area;
- 14 • the Company lacks a distribution system to serve any customers at the present time;
- 15 • the requested extension in Exhibit A is immediately adjacent to and east of the
16 recently extended certificated service area of BDWC, which although BDWC has no
17 existing utility plant in the immediate vicinity as of the date of the hearing, has proven
18 to be a viable system that operates in compliance with the rules and regulations of
19 ADWR, ADEQ and the Commission; and
- 20 • Staff did not initially believe that Applicant's purported "requests for service" from
21 individual lot owners in the extension area were anything other than letters of interest
22 from property owners and did not obligate them to pay for service from the Company
23 if it became available.

24 33. Additionally, Staff believed that the minimal number of possible connections in the
25 extension area would not insure viable operations by the Company and be in the public interest.

26 34. Staff further recommended that the Company be ordered to file a curtailment tariff
27

28 for development in the near future. Mr. Bowler will soon require a construction meter be installed at the parcel on the 10"
main which is to extend into the area described in Exhibit A.

1 within 60 days of the effective date of any Decision in this proceeding.

2 35. In the Amended Staff Report filed on October 24, 2005, Staff recommended the
3 Commission, instead of denying the application, limit the approval of the Company's application to
4 the issuance of an Order Preliminary and continued to recommend the denial of the HF Tariff. In
5 part, Staff revised its recommendation for the following reasons: the Company's backbone plant
6 construction was approved with the Certificate of Approval of Construction from ADEQ; the
7 Company posted a \$10,000 bond² which had been ordered in Decision No. 61525; and the Company
8 had in excess of 100 requests for service signed by property owners in the extension area.

9 36. Staff also made the following additional recommendations:

- 10 1. that the Company be required to file, within two years of the effective date
11 of this Decision, with the Commission's Docket Control, that it has
12 adequate water supply for the extension area that can be satisfied with a
13 current ADWR Letter of Adequacy or an ADWR Physical Availability
14 Demonstration for the extension area³;
- 15 2. that the Company be required to file, within two years of the effective date
16 of this Decision, with the Commission's Docket Control, a CAC issued by
17 ADEQ covering the construction of the water system necessary to begin
18 service to the extension area;
- 19 3. that the Company not be granted any extensions of time to satisfy the
20 above two requirements;
- 21 4. that upon the Company's compliance with conditions number 1 and 2
22 above, Applicant file a motion for the issuance of a Certificate;
- 23 5. in the event the Company fails to satisfy conditions number 1 and 2 above
24 in a timely fashion, then the Order Preliminary should be null and void;

25
26 ² However, Staff pointed out that the Company's bond would only provide refunds on customer deposits upon
27 Applicant's termination of business and did not entirely meet the requirements of a performance bond to insure Applicant
28 met its obligations in case of insolvency.

³ In support of the Company's application herein, a copy of ADWR's Letter of Physical Availability dated March
26, 2002, was admitted into evidence as Exhibit A-9 in the hearing. The extension area described in Exhibit A is included
within the area described in the 2002 letter which the Company maintains should satisfy this condition required by Staff.

- 1 6. that the Company obtain, by the time its present bond expires on August 3,
- 2 2006, a performance bond which meets the requirements of Decision No.
- 3 61525;
- 4 7. that the Company apply the depreciation rates specified in the Staff Report
- 5 filed March 15, 2005, in this proceeding; and
- 6 8. that the Company file, within 60 days of the effective date of this Decision,
- 7 with Docket Control, a Curtailment Tariff.

8 37. On November 14, 2005, Staff filed a late-filed exhibit in the form of a letter from
9 ADEQ which states that "ADEQ does not require a facility to have or be in the process of applying"
10 for a Certificate in order for the Company to apply for, or for ADEQ to issue a CAC.

11 38. Because an allowance for the property tax expense of the Company is included in the
12 Company's rates and will be collected from its customers, the Commission seeks assurances from the
13 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
14 authority. It has come to the Commission's attention that a number of water companies have been
15 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
16 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, the
17 Company should annually file, as part of its annual report, an affidavit with the Utilities Division
18 attesting that the company is current in paying its property taxes in Arizona.

19 39. Under the circumstances, after considering the evidence in the record and reviewing
20 the current requests for service, the Company has established that there is need for it to provide
21 public water utility service at the present time and there is an actual need for water service in the area
22 sought to be certificated. However, based on the record, we believe that an Order Preliminary should
23 be issued as recommended by Staff and the Company should also comply with the recommended
24 conditions set forth in Findings of Fact No. 36 before a Certificate is issued. Additionally, the HF
25 Tariff should be denied and the Company should charge its existing rates in the extension area.

26 ...

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28 ...

CONCLUSIONS OF LAW

1
2 1. The Company is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 application.

6 3. Notice of the application and hearing thereon was given in accordance with the law.

7 4. Applicant has established there is a need and necessity for public water service and
8 this requires issuance of an Order Preliminary prior to the approval of an extension of its Certificate
9 authorizing it to construct, operate and maintain facilities to furnish water service in the area
10 described in Exhibit A.

11 5. The Company is a fit and proper entity to receive an Order Preliminary for the
12 extension area.

13 6. The public convenience and necessity require the issuance of an Order Preliminary to
14 Applicant authorizing it to provide water service to the public in the area sought to be certificated
15 herein.

16 7. The application by Applicant to extend its Certificate should be granted subject to an
17 Order Preliminary being issued prior to a Certificate subject to the conditions set forth above in
18 Findings of Fact No. 36.

19 8. The Company's request for the approval of a HF Tariff should be denied.

ORDER

20
21 IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-282(D), this Order Preliminary
22 to the issuance of the Certificate of Convenience and Necessity is granted and upon completion of the
23 requirements contained in Findings of Fact No. 36, Virgin Mountain Utilities Company shall file a
24 motion in this docket for the issuance of a Certificate of Convenience and Necessity authorizing it to
25 construct, maintain and operate facilities to provide water service to the public in the area more fully
26 described in Exhibit A.

27 IT IS FURTHER ORDERED that upon the motion of Virgin Mountain Utilities Company
28 and verification of satisfaction of the requirements for the issuance of the Certificate of Convenience

1 and Necessity, Staff shall prepare and docket an Order that grants the Certificate of Convenience and
2 Necessity for Commission approval.

3 IT IS FURTHER ORDERED that Virgin Mountain Utilities Company's request for approval
4 of a Hook-Up Fee Tariff is hereby denied.

5 IT IS FURTHER ORDERED that in the event Virgin Mountain Utilities Company does not
6 timely comply with condition numbers one and two as set forth above in Findings of Fact No. 36,
7 then the Order Preliminary approved herein shall be deemed null and void. In such event, Staff shall
8 file a memorandum to close this docket.

9 IT IS FURTHER ORDERED that Virgin Mountain Utilities Company shall charge water
10 customers in the area described in Exhibit A its existing rates and charges pursuant to Decision No.
11 61525 until further Order by the Commission.

12 IT IS FURTHER ORDERED that Virgin Mountain Utilities Company shall file, as part of its
13 annual report, an affidavit with the Utilities Division attesting that the Company is current on paying
14 the property taxes in Arizona.

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IT IS FURTHER ORDERED that Virgin Mountain Utilities Company shall file, within 60 days of the effective date of this Decision, with the Commission's Docket Control, a curtailment tariff.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:mj

SERVICE LIST FOR:

VIRGIN MOUNTAIN UTILITIES COMPANY

DOCKET NO.:

W-03551A-04-0325

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LEGAL DESCRIPTION

Section 15, Township 39 North, Range 16 West
G&SRB&M, Mohave County, Arizona

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